

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

EDITH S.-L.¹,

Plaintiff,

v.

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,

Defendant.

Civil No. 2:21cv151

FINAL ORDER

Plaintiff Edith S.-L. (“Plaintiff”) brought this action under 42 U.S.C. § 405(g) seeking judicial review of the final decision of the Social Security Commissioner (“Commissioner”) denying her claim for supplemental security income under the Social Security Act. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia, and by order of reference dated June 29, 2021 (ECF No. 13), this matter was referred to United States Magistrate Judge Douglas E. Miller for a Report and Recommendation (“R&R”). Judge Miller issued his R&R on February 2, 2022 (ECF No. 25), recommending that the Court grant the Commissioner’s Motion for Summary Judgment and affirm the

¹ The Committee on Court Administration and Case Management of the Judicial Conference of the United States recommends that, due to substantial privacy concerns, federal courts use only the first name and last initial of claimants in Social Security cases.

Commissioner's finding of no disability. Plaintiff filed timely objections (ECF No. 26), and the Commissioner responded (ECF No. 27).

A district judge must make a *de novo* determination as to any portion of the R&R to which timely objection has been made. 28 U.S.C. § 636(b)(1)(B)–(C); Fed. R. Civ. P. 72(b). Here, Plaintiff objects that, contrary to Judge Miller's holding, the ALJ erred in discounting the opinion of Plaintiff's treating physician, Dr. Snead; that the ALJ was required to (but did not) include a particular attendance limitation in the RFC determination; and that the ALJ erred by granting weight to an earlier decision that was constitutionally invalid under the Appointments Clause. The Commissioner responds that Plaintiff's arguments merely restate her arguments from her summary judgment briefing; that substantial evidence supported the ALJ's treatment of Dr. Snead's "checkbox opinion"; that the ALJ was not required to include a specific attendance or concentration limitation in the RFC; and that Plaintiff's Appointments Clause challenge amounts to an impermissible collateral attack on an earlier, unappealed ALJ determination and should be rejected.

Having reviewed the record and examined the objections filed by Plaintiff to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, the Court finds no error with Judge Miller's proposed disposition. In particular, the Court agrees with Judge Miller's cogent analysis of the putative Appointments Clause issue. Accordingly, the Court hereby **ADOPTS AND APPROVES** in full the findings and recommendations set forth in the Report and Recommendation: Plaintiff's Motion for Summary Judgment (ECF No. 19) is

DENIED, the Commissioner's Motion for Summary Judgment (ECF No. 22) is **GRANTED**, the decision of the Commissioner is **AFFIRMED**, and this matter is **DISMISSED WITH PREJUDICE**.

The parties are **ADVISED** that an appeal from this Final Order may be commenced by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. This written notice must be received by the Clerk within sixty days from the date of this Final Order.

The Clerk is **REQUESTED** to mail a copy of this Order to all parties.

IT IS SO ORDERED.

/s/

Arenda L. Wright Allen
United States District Judge

September 26, 2022
Norfolk, Virginia